(8)

No. 84-1044

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PACIFIC GAS AND ELECTRIC COMPANY,
Appellant,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal From The Supreme Court Of California

BRIEF OF SIERRA PACIFIC POWER COMPANY AS AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT

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Sierra Pacific Power Company ("Sierra Pacific") respectfully submits this brief as amicus curiae in support of the jurisdictional statement of Appellant Pacific Gas and Electric Company ("PG&E"). The parties have given their written consent to the filing of this brief, and copies of the letters of consent have been filed with the clerk of this Court.

STATEMENT OF THE CASE

By *TURN v. PG&E*, Decision No. 83-12-047[1], dated December 20, 1983, modified by *TURN v. PG&E*, Decision No. 84-05-039, dated May 2, 1984, the Public Utilities Commission of the State of California ("PUC") ordered PG&E to insert in PG&E's billing envelopes materials submitted by a private consumer-representative organization called Toward Utility Rate Normalization ("TURN"). App. at A-45. The order requires PG&E to insert TURN's material in the "extra space" in PG&E's billing envelopes four times a year for the next two years. "Extra space" is defined by the PUC as the space remaining in the billing envelope, after inclusion of PG&E's monthly bill and any required legal notices, which could be filled without having to pay additional postage. App. at A-3.

PG&E sought California Supreme Court review of the PUC's decision on the grounds, among others, that such decision violated the First and Fifth Amendments to the United States Constitution. By Order dated October 4, 1984, the California Supreme Court denied PG&E's petition for writ of review. App. at A-73. PG&E has appealed to this Court.

INTEREST OF THE AMICUS CURIAE

Sierra Pacific is an investor-owned public utility engaged in the generation, purchase, transmission, distribution and sale of electric energy in Nevada and California. The company, incorporated in Nevada, provides electric service to an area part of which is in California and part of which is in Nevada. In addition, the company provides gas and water service in Nevada. It is subject to the jurisdiction of two state utility regulatory commissions, the PUC and the

[1] Reproduced in Appendix to the Jurisdictional Statement of Appellant Pacific Gas and Electric Company ("App."), A-1.

corresponding Public Service Commission of Nevada ("Nevada Commission"). Sierra Pacific mails bills to electric customers in both California and Nevada. All bills are prepared at one billing center in Nevada without regard to state residence of the customer.

If the order directed at PG&E is allowed to stand, the PUC can be expected to issue a similar order directed at Sierra Pacific, with resultant invasion of Sierra Pacific's constitutional rights.

If the order directed at PG&E is allowed to stand, the Nevada Commission is likely to be encouraged to take a similar step but with an order reflecting the circumstances of Nevada. Sierra Pacific may be caught in the position of being unable to satisfy the inconsistent directives of two state regulatory commissions concerning the same extra space.[2]

Even if the Nevada Commission were to issue an order compatible with that of the PUC or were to refrain altogether from issuing an order on use of billing envelopes, Sierra Pacific could find itself in a difficult practical situation requiring separate bill sorting and reorganization of its entire billing system.

If Sierra Pacific were required to make its extra envelope space available to third parties, it would by necessity be involved in the expected wrangling over that space. Competing groups would likely file requests for use of the limited extra space. The utility would be forced to appear in state regulatory proceedings to determine which groups should be given extra space. The utility would be faced

[2] The Nevada Commission has in fact instituted a rule-making proceeding to consider whether it has jurisdiction over the extra space and, if so, to consider what rules it should issue. *In Re Investigation of Commission Jurisdiction over Extra Space in Utility Billing Envelopes*, Docket No. 84-1129, (Notice dated Jan. 7, 1985).

with the practical difficulties of determining whether the third party's materials comply with the order (i.e., weight of paper, size of envelope, and the like), and of ensuring that the materials are properly received and inserted in the extra space.

Finally, Sierra Pacific would be faced with the practical concerns of having to compete itself with various groups over the use of the available extra space in Sierra Pacific's envelopes.

Sierra Pacific supports PG&E's Jurisdictional Statement in its appeal from the PUC's order, and requests this Court to note probable jurisdiction. Sierra Pacific joins PG&E's argument that the PUC's order violates the First Amendment to the United States Constitution for the reasons set forth in PG&E's Jurisdictional Statement, as well as for the reasons set forth below. In addition, Sierra Pacific believes that the PUC's order violates the prohibition in the Fifth Amendment to the United States Constitution against a taking of private property without just compensation. This issue was raised below by PG&E[3] and is commented on in its Jurisdictional Statement. Jurisdictional Statement at 7-9.

SUMMARY OF ARGUMENT

There are two basic reasons why the PUC's decision is unlawful. First, the PUC's order violates the Fifth Amendment's prohibition against taking without just compensation. A utility's billing envelope, including any extra space,

[3] PG&E first raised the issue before the Commission. *See TURN v. PG&E*, Decision No. 83-12-047, App. at A-1, A-24, A-27. It raised the issue again in the Supreme Court of California its Petition for Writ of Review filed with that court on June 4, 1984. *See* Jurisdictional Statement at 8-9; *See also Petition for Writ of Review with Memorandum of Points and Authorities In Support Thereof* at 67-70.

is the utility's private property. By paying bills for service customers do not acquire any interest, legal or equitable, in the property paid for out of monies received for service, and such property belongs to the utility. *Board of Public Utility Commissioners v. New York Telephone Company*, 271 U.S. 23, 32 (1926). Each time a third party inserts materials in a utility's billing envelope, the result is a permanent, physical taking within the standard enunciated in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). Under the Fifth Amendment such taking is unlawful in the absence of just compensation.

Secondly, the PUC's order violates the First Amendment's prohibition against restrictions on free speech. In addition to the arguments in PG&E's Jurisdictional Statement, Sierra Pacific emphasizes that under the First Amendment the state can impose a time, place or manner restriction on speech but only when such restriction is *not* based on content. The PUC's order *is* based on content since it requires the PUC's determination of what serves to educate the public. It is therefore unlawful under *Regan v. Time, Inc.*, 52 U.S.L.W. 5084, 82 L. Ed. 2d 487 (1984).

Moreover, the PUC's order cannot avoid First Amendment limitations on the ground that its speech regulation serves a compelling state interest. The PUC's expressed interest does not qualify as compelling within the meaning given that word by this Court, and even if it did the PUC order is not saved from illegality under the First Amendment because there are narrower and less drastic means by which the PUC can accomplish its interest. *Corsolidated Edison v. Public Service Commission*, 447 U.S. 530 (1980).

I

ARGUMENT

THE PUC'S ORDER VIOLATES THE FIFTH AMENDMENT BECAUSE IT CONSTITUTES AN IMPROPER TAKING OF UTILITY PROPERTY WITHOUT COMPENSATION

A. The Billing Envelope, Including Any Extra Space, Is the Utility's Property

The PUC found that the extra space in PG&E's billing envelope is ratepayer property. App. at A-3. The PUC justified that finding by the following rationale. First, it noted that due to the manner in which the U.S. Postal Service calculates postal rates, the mimimum postage for the bill plus legal notices still leaves extra space in the billing envelope which can be filled without incurring more postage. Second, it declared that the cost of mailing the bill and any required legal notices is paid for by PG&E's ratepayers. Third, it declared that to find that the extra space belongs to the utility would unjustly enrich the utility and simultaneously deprive the ratepayer of the value of the space. *Ergo,* the extra space is ratepayer property. *Id.*

The PUC's analysis and finding are wrong as a matter of law. This Court has consistently held that by paying bills for service, utility customers do not acquire any interest in property purchased by the utility for the conduct of its business. Thus, in *Board of Public Utility Commissioners v. New York Telephone Company*, 271 U.S. 23 (1926) this Court said that "[b]y paying bills for service [customers] do not acquire any interest, legal or equitable, in the property used for their convenience.... Property paid for out of moneys received for service belongs to the company.... Customers pay for service; not for the property used to render it." *Id.* at 32. As the Court stated in *United R. & Electric Co. v. West*, 280 U.S. 234 (1930), ". . . the

property of a public utility, although devoted to the public service and impressed with a public interest is still private property; . . ." *Id.* at 249, *overruled on other grounds, Federal Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 606-607 (1944) (overruling previous decision as to proper method for calculating depreciation).

Consistent with the above decisions, this Court's opinion in *Consolidated Edison v. Public Service Commission*, 447 U.S. 530 (1980) assumes in the course of its First Amendment analysis that utility billing envelopes belong to the utility. *Id.* at 540. In that case, this Court contrasted the defendant's attempted regulation of utility bill inserts with cases where private parties sought to use public property and observed that the utility sought "merely to utilize *its own billing envelopes* to promulgate its views." *Id.* at 539-540 (emphasis added).

This Court's holdings as set forth above are consistent with the economic rationale of utility regulation. The purpose of utility regulation is to provide ratepayers adequate service at reasonable cost. *Morel v. Railroad Commission of California,* 11 Cal. 2d 488, 492 (1938). *See* Priest, *Principles of Public Utility Regulation,* Vol. 1, p. 3 (The Michie Company, 1969), *citing* Cassidy, *Public Utility Regulation in California,* Cal. Pub. Util. Code at 5 (West 1956). A utility provides service in a field affected with a public interest, but it is nevertheless a private company operated with a profit motive for its shareholders. Ratepayers are entitled to adequate service priced low enough to assure that the utility earns no more than a reasonable return on its property. Ratepayers are not entitled to any part of the utility's property. *Board of Public Utility Commissioners v. New York Telephone Company,* 271 U.S. at 32.

No one has questioned that PG&E's use of the mail at minimum first-class postage results in the lowest reasonable

cost of billing for service. It is simply fortuitous that the Postal Service's weight limit for minimum first-class postage creates extra space beyond the weight created by the bill, return envelope and legal notices. Obviously the Postal Service does not tailor its weight limits to coincide with the weight of the utility's bill, return envelope and legal notices.

The existence of extra space does not create a new property right in ratepayers. The utility owns the envelope and the extra space. The ratepayers are entitled to reliable and reasonably priced service, but not to any part of the utility's property.[4]

B. The PUC's Order Constitutes an Improper Taking of the Utility's Property

By its order, the PUC has taken PG&E's property, the extra space in the envelopes, and has given that property to a private third party. In the absence of the PUC order, PG&E could use the extra space for distribution of its publication *Progress*, or for any other purpose it saw fit. Now PG&E must be prepared to give the extra space up to third parties to the extent the PUC may determine.

The Fifth Amendment provides in part: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. The Fifth Amendment, through the Fourteenth Amendment, applies to actions by the states, including actions taken by a state through its regulatory agencies. *See generally Chicago. B.&Q.R. Co. v. Chicago,* 166 U.S. 226 (1897). The proper manner for any PUC taking of PG&E's extra space is by condemnation.

[4] The PUC painted itself into a corner. By finding the extra space to be ratepayer property and then regulating the use of that space, the PUC is in an untenable position. The PUC's powers obviously do not extend to the regulation of property belonging to a utility's customers.

The PUC argued that even if the extra space is utility property, its order is reasonable regulation and not a taking, and cites this Court's decision in *Pruneyard Shopping Center v. Robins,* 447 U.S. 74 (1980). App. at A-25. In *Pruneyard,* this Court held that requiring that the owners of a shopping mall allow individuals to circulate petitions in the mall did not constitute an unlawful taking under the Fifth Amendment. 447 U.S. at 83. The PUC failed to recognize that *Pruneyard* involved private property onto which the public was invited daily, a very different situation from the present case. PG&E has never invited TURN or similar interest groups to use space in the utility's billing envelope, and in the proceedings below PG&E actively sought to exclude TURN's use.

This Court's decision in *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419 (1982), is more closely on point. In *Loretto,* the New York Legislature, to facilitate tenant access to cable television, passed a law requiring landlords to permit cable television companies to install cable television facilities on the landlords' property. *Id.* at 423. This Court held that a permanent physical occupation of property is a taking, and remanded the matter to the state courts to determine the amount of compensation due. *Id.* at 441. The Court emphasized that the taking was a permanent, physical occupation authorized by the government, and declared "our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner." *Id.* at 434, 435.

In this case the PUC's order constitutes a permanent, physical taking of the extra space in PG&E's envelopes. As in *Loretto*, the physical occupation of the space in question here is permanent and absolute. *See Loretto,* 458 U.S. at 435 n. 12. Each time PG&E is required to let others use

the extra space in a particular month's billing envelopes the result is a taking: PG&E is forever denied the space in the envelopes mailed containing others' inserts. The extra space owned by PG&E is gone once the space is filled with others' inserts and mailed to the customer. This situation is in stark contrast to *Pruneyard*, where this Court noted that allowing the distribution of leaflets and the solicitation of signatures in the shopping center would not unreasonably impair the value or use of the property. *Pruneyard*, 447 U.S. at 83. Here, however, the value and use of the utility's property is destroyed as soon as the extra space is denied PG&E and given to others. Thus, the PUC's order improperly takes utility property.

C. The Logical Extension Of The PUC's Order Would Result In Disruptive Ratepayer Use Of Utility Property For Almost Any Purpose

Logically extended, the PUC's order would disrupt the use by utilities of their own property to an absurd degree. Each of the following possibilities is an application of the PUC's reasoning:

> (1) A ratepayer organization believes that all-electric kitchens waste energy and wishes to solicit donations to pay for a presentation to the regulatory commission urging an order forbidding such kitchens. It asks the commission to compel the utility to use the "extra space" on its fleet of 5,000 trucks to post signs advocating its views. While the organization agrees to pay for painting the signs on the trucks, it claims the right to use "extra space" on the trucks because ratepayers paid for the trucks. The utility, under the PUC's approach, would be forced to allow the use even if the utility believes that encouraging the widest possible installation of electric appliances is in the ratepayers' best interest.

> (2) A group organized to champion lifeline utility rates wants to use the utility's photocopying machines, when otherwise idle, to copy documents for soliciting funds for the group. The PUC would apparently order the utility to grant the group the right to use the "extra space," as long as the group pays for the paper and electricity utilized and any additional maintenance required. The utility may believe that lifeline needs should be met through taxation rather than subsidization by non-lifeline customers.
>
> (3) A group opposing nuclear power wishes to solicit and maintain records of donations with a view to presenting its position to the PUC. It demands the right to use the utility's computer and telephone system for such purpose when the utility's offices are closed. The utility has previously been authorized by the PUC to build, and has built, nuclear power plants and is selling the power generated therefrom. The PUC would again order the utility to grant the group use of to the "extra space," as long as the group pays any incremental telephone and computer costs associated with the use.
>
> (4) A group championing a rate scheme under which urban telephone rates subsidize rural telephone use wants to hold meetings in a utility's boardroom from time to time when the room is not otherwise in use, to discuss how to present its views to the PUC in rate hearings. The PUC would, under its rationale, consider the unused room capacity "extra space" belonging to the ratepayers, and order the utility to permit the group to use the "extra space," as long as the group pays for any additonal costs arising from such use.

By the PUC's logic, all of the "extra space" belongs to the ratepayers, and could be used by any of them.

These examples illustrate that the intrusion by ratepayer groups upon various kinds of utility property acquired and used to provide service would interfere in varying degrees with the utility's managment of its property. The problem would be magnified whenever several groups with opposing views would compete for use of the "extra space." As this Court has admonished, "[i]t must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership." *Southwestern Bell Tel. Co. v. Public Service Commission*, 262 U.S. 276, 289 (1923).

II

THE PUC'S ORDER VIOLATES THE FIRST AMENDMENT BECAUSE IT IMPERMISSIBLY REGULATES THE CONTENT OF SPEECH AND BECAUSE THE STATE'S INTEREST IS NEITHER COMPELLING NOR PURSUED BY NARROWLY TAILORED MEANS

There are three ways a state permissibly may regulate speech under the First Amendment: (a) by limiting speech to a reasonable time, place, or manner, provided such limiting is not based on content determination; (b) by regulating subject-matter in certain confined categories such as obscenity; and (c) by ordering speech "narrowly tailored" where there is a compelling state interest and where no alternative less drastic means of serving that interest are available. *Consolidated Edison v. Public Service Commission*, 447 U.S. at 535.

In its Jurisdictional Statement, PG&E establishes that the First Amendment protections apply to public utilities, and then correctly argues that PG&E's First Amendment rights are infringed by the PUC's order in at least three

ways: first, by impairing PG&E's right to communicate with its customers; second, by forcing PG&E to carry the messages of a third party and to speak even though PG&E prefers to remain silent; and third, by ensnarling the PUC in improper content analysis of competing messages. *Jurisdictional Statement* at 12. PG&E also argues that the PUC's stated interest in regulating speech is not compelling and the PUC's order is not narrowly tailored to serve its allegedly compelling interest. *Id.* at 23.

Sierra Pacific joins in these arguments. In addition, it elaborates on PG&E's content regulation argument and on its argument that there was no compelling state interest pursued through narrowly tailored means.

A. The PUC's Order Is Not a Valid Time, Place, or Manner Restriction Because It Unconstitutionally Regulates the Content of Speech

The First Amendment is hostile to content-based regulation of speech. *Consolidated Edison v. Public Service Commission*, 447 U.S. at 537. Just last Term this Court reaffirmed that "[r]egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Regan v. Time, Inc.*, 52 U.S.L.W. 5084, 82 L. Ed. 2d 487, 494 (1984). This Court's opinion in *Regan v. Time, Inc.* also reaffirmed that time, place, and manner regulations of speech may not be based on the content or subject matter of the message. *Id.* Under the standards reiterated by this Court in *Regan v. Time, Inc.*, the PUC's order unconstitutionally regulates the content of speech.

The PUC maintains that its order is, in effect, a reasonable time, place, or manner restriction that does not require regulation of the content of speech. App. at A-21. According to the PUC, "[t]he proposal does not require the Commission to look at content at all . . . the proposal as we adopt it is neutral as to content of the parties' messages and,

therefore, meets [the] subject matter standard." *Id.* Moreover, the PUC maintains that "[i]t was not our intent then, nor is it now, to involve ourselves in judging the relative merits of the speech of different factions." *Id.* at A-8.

Yet the PUC itself clearly declares its intention to evaluate speech content, notwithstanding its protests to the contrary by stating:

> Should other proposals [for use of the extra space] be brought before us, *we will consider the* feasibility and *benefits of each* at that time. *If we find that these proposals are meritorious*, we could order that extra space be made available for the new program. . . .

Id. at A-19 (emphasis added).

The PUC has already made content-based evaluations of speech. It necessarily made a content-based choice when it approved one of TURN's three proposals, since the PUC in effect certified TURN as a source of education and information to the customers. By the PUC's own admission, it determined that "TURN's proposals are meritorious. Under each proposal, residential ratepayers . . . would be given an opportunity to be informed of and to support, advocacy efforts on their behalf through use of the extra space . . . [w]e believe that this would be an appropriate . . . use of the extra space." *Id.* at A-16.

It made another content-based choice when it ruled that TURN's message deserved inclusion and that PG&E's *Progress* deserved to be excluded from the extra space unless TURN did not use it all. *See* App. at A-53.

Moreover, the PUC's order requires it to make content-based evaluations in the future. If the PUC's order is allowed to stand, numerous groups will no doubt clamor for use of the extra space. Their viewpoints will likely span a wide breadth of opinion on various issues ranging from

elimination of private ownership of public utilities to creation of special rates for particular industries, rates according to value of end use, and the like. The list is potentially limitless.[5]

The PUC's stated purpose for its regulation is to educate consumers in the hope of encouraging their participation in PUC proceedings. In its PG&E decision, the PUC professes that the justification for its regulation is one it set forth in the UCAN decision: to assure "the fullest consumer participation . . . and the *most complete consumer understanding* possible of energy-related issues." *Center for Public Interest Law v. San Diego Gas & Electric Co.*, Decision No. 83-04-020 (Cal. PUC) Apr. 6, 1983) *reprinted in* App. at A-90, A-103 ("UCAN decision") (emphasis added). *See* App. at A-22.[6] When the PUC decides which proposals for use of the extra space are "meritorious" enough to warrant inclusion in the utility's billing envelopes it is thereby deciding which proposals have sufficient educational value for the consumers' "benefit." *See* App. at A-19.

This Court held in *Regan v. Time, Inc.* that it is unconstitutional for the state to make determinations based on

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[5] The PUC's regulation of content in this case is especially troubling because by requiring TURN's materials to be inserted in the billing envelope, those materials enjoy a stamp of legitimacy which would be absent if mailed in a third party envelope. The result is that, through the government's choice of what groups may use a utility's envelopes and for what purpose, the government is in the position of shaping and directing public debate. The PUC has already denied at least one group's request for the use of the extra space. App. at A-157.

[6] The PUC misquoted the UCAN decision in its PG&E decision by deleting the word "consumer." The UCAN decision actually states that assuring "the most complete *consumer* understanding" is the state's goal. *Id.* at A-103 (emphasis added). The PUC's motivation for speech regulation therefore must be its own view on what educates and informs the public.

the educational value of a speaker's message. 52 U.S.L.W. 5084, 82 L. Ed. 2d at 494. In that case, this Court recognized that "[a] determination concerning the newsworthiness or educational value . . . cannot help but be based on the content . . . and the message it delivers. . . . [O]ne will be allowed and another disallowed solely because the Government determines that the message being conveyed in the one is newsworthy or educational while the message imparted in the other is not." *Id.*

The statutory provision held unconstitutional in *Regan v. Time, Inc.* was one allowing certain speech if it was for an educational purpose and disallowing it if it was not. 82 L. Ed. 2d at 492. The PUC admits that it will assess the benefits and merits of proposals for use of the extra space, App. at A-19, and will allow them if they sufficiently serve the state's purpose of educating consumers. As this Court held in *Regan v. Time, Inc.*, such regulations cannot be tolerated under the First Amendment. 82 L. Ed. 2d at 494.

As the government attempted to do in *Regan v. Time, Inc.*, the PUC seeks to allow or disallow particular messages based on the state's assessment of their merit. As in *Regan v. Time, Inc.*, this Court ought not permit the state to regulate speech based on the state's view of what serves to educate the public.

B. The PUC Has Not Shown a Compelling State Interest Pursued by Narrowly Tailored Means Which is Necessary to Justify Its Regulation of Speech

The government can regulate speech without violating First Amendment protections if such regulation is necessary to further or protect a compelling state interest and if there are no narrower and less drastic means to accomplish the government's purpose. *Wooley v. Maynard*, 430 U.S. 705, 715-717 (1977). *See Consolidated Edison v. Public Service Commission*, 447 U.S. at 535.

In this PG&E case, the PUC sets forth the state's interest as that described in its earlier UCAN decision by saying:

> The State interest . . . is the assurance of the fullest possible consumer participation in [PUC] proceedings and the most complete consumer understanding possible of energy-related issues.

App. at A-103. *See* note 6, *supra.*

Sierra Pacific submits that it is impossible to accept this claim of interest as compelling within the meaning given that term by this Court. The PUC's description of the state's interest is extraordinarily broad and vague. Does the PUC really mean "the fullest possible consumer participation" and "the most complete consumer understanding possible,"? Rather than the interest advanced by the PUC, the state's proper interest in this case is delivery of reliable electricity service at reasonable cost. This interest, if properly pursued, in no way requires regulation of speech.

Even if it were accepted that the PUC's asserted interest is compelling, the PUC order is unlawful because there are narrower and less drastic measures available to accomplish the state's purpose of encouraging consumer participation in PUC proceedings and education on energy-related issues. For example, the PUC itself can travel around the state and hold public meetings to educate consumers and solicit interested parties' views. The PUC can award fees and expenses to participants in rate hearings who are otherwise unable to participate. Such awards have already been made to various groups, including TURN, with obvious effect. App. at A-15 n.5. In sum, the PUC has broad powers and unique capabilities to educate and inform the public without infringing First Amendment Rights.

CONCLUSION

Utilities' rights to private property and freedom of speech are well established. The PUC's order in this case infringes PG&E's constitutional rights and, if allowed to stand, will likely provide the impetus for other states' utility regulatory agencies to adopt similar orders. Because the PUC's order violates the First and Fifth Amendments, Sierra Pacific urges this Court to note probable jurisdiction of PG&E's appeal.

Respectfully submitted,

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